

Anticipated acquisition by S.C. Johnson & Son, Inc. of People Against Dirty Holdings Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6713/17

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 8 January 2018. Full text of the decision published on 25 January 2018.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

SUMMARY

1. S.C. Johnson & Son, Inc. (**SCJ**) has agreed to acquire People Against Dirty Holdings Limited (**PAD**) (the **Merger**). SCJ and PAD are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that the Parties will cease to be distinct as a result of the Merger, that the share of supply test is met and that, accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties overlap in the supply of household cleaning (and related) products in the United Kingdom (**UK**), including: (i) non-dilutable all-purpose cleaning products, (ii) kitchen cleaning products, (iii) oven cleaning products, (iv) floor cleaning products, (v) wood floor cleaning products, (vi) bathroom cleaning products, (vii) shower cleaning products, (viii) toilet cleaning products, (ix) furniture cleaning products, (x) window and glass cleaning products, (xi) laundry stain removal products, and (xii) room fragrance products. In the UK, SCJ's leading brands include Glade, Pledge and Mr. Muscle. PAD supplies natural or eco-friendly household cleaning products under its brands Ecover and Method. PAD also supplies dish care, personal

care and laundry products in the UK; however, there is no overlap between the Parties' activities for the supply of these goods in the UK so the CMA did not consider these products further.

4. On a cautious basis, the CMA considered each of the product categories in which the Parties' activities overlap as a separate frame of reference. Based on the evidence received during its investigation, the CMA also included retailers' own-label household cleaning products within each frame of reference. As part of its competitive assessment, the CMA also considered any differentiation between the Parties' offerings given PAD's focus on the supply of natural or eco-friendly household cleaning products.
5. The CMA considered the impact of the Merger using a UK-wide frame of reference.
6. The CMA found no competition concerns in the majority of the overlapping product categories in light of the Parties' low combined shares of supply and/or the small increment resulting from the Merger. The CMA therefore focused its competitive assessment on the Merger's impact in window and glass cleaning products, furniture cleaning products, floor cleaning products and wood floor cleaning products in the UK.
7. In investigating the competitive effects of the Merger in each of these frames of reference, the CMA assessed a range of evidence, including the Parties' internal documents, share of supply data, and third parties' views. In respect of each frame of reference, the CMA found that the Parties were not closest competitors, and that, post-Merger, sufficient competitive constraints from other suppliers of household cleaning products will remain.
8. The CMA believes that these constraints are sufficient to ensure that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) in any market.
9. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

10. SCJ is a company incorporated in the United States, specialising in the manufacture and supply of household cleaning products targeted at consumer purchasers, as well as professional products targeted at institutional purchasers. In the UK, SCJ is active in the supply of certain household

cleaning (and related) products. SCJ sells household cleaning products under the Glade, Pledge and Mr Muscle brands (amongst others). The turnover of SCJ in 2017 was around £[x] billion worldwide, of which around £[x] million was generated in the UK.

11. PAD is a UK registered company active in the supply of household cleaning, laundry and fabric care, dishwashing, personal care and hand and dish soap products. PAD sells household cleaning products under the Ecover and Method brands. The turnover of PAD in 2016 was around £[x] million worldwide, of which around £[x] million was generated in the UK.

Transaction

12. The transaction involves the proposed acquisition by SCJ of PAD pursuant to a sale and purchase agreement entered into on 8 September 2017.
13. The Parties informed the CMA that the Merger is also the subject of review by competition authorities in Germany and the United States. The Merger has been cleared by both these authorities.

Jurisdiction

14. As a result of the Merger, the enterprises of SCJ and PAD will cease to be distinct.
15. The Parties overlap in the manufacture and supply of household window and glass cleaning products in the UK, with a combined share of supply of [30-40]% and an increment of [0-5]%, by revenue.¹ The CMA therefore believes that the share of supply test in section 23 of the Act is met.
16. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
17. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 21 November 2017 and the statutory 40 working day deadline for a decision is therefore 18 January 2018.

¹ See Table 1 below.

Counterfactual

18. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.²
19. [✂].
20. The Parties submitted that the appropriate counterfactual against which to assess the Merger was the prevailing conditions of competition, and the CMA has found no evidence indicating that it should adopt an alternative counterfactual.
21. Therefore, the CMA has adopted the prevailing conditions of competition as the counterfactual in this case.

Frame of reference

22. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.³
23. The Parties overlap in the supply of a number of household cleaning products in the UK.

² [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 4.3.5. The [Merger Assessment Guidelines](#) have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, Annex D).

³ [Merger Assessment Guidelines](#), paragraph 5.2.2.

Product scope

24. The supply of household cleaning products has been recently considered by the European Commission in the proposed merger between Henkel and Spotless (**Henkel/Spotless**).⁴ In that case, the European Commission, following its previous practice, divided household cleaning products into: i) multipurpose cleaners used to clean non-permeable surfaces and suitable for general household use, ii) lavatory cleaners used for cleaning and removal of bad odours in lavatories, iii) polishes and waxes used to clean, shine and protect furniture and wooden or tiled floors, and iv) metal polishes used to clean and shine metals. The European Commission considered, but did not conclude on, whether multi-purpose cleaners were substitutable for 'special' cleaning products marketed for specific purposes. The European Commission considered that there was some degree of substitutability but that the substitutability was not fully symmetrical as the more specialized cleaning products were not fully usable on other surfaces. The European Commission considered private label products as part of the same market as branded products.
25. In the present case, the CMA started by considering the narrowest product frames of reference in which the Parties' activities overlap. These were the supply of: (i) non-dilutable all-purpose cleaning products, (ii) kitchen cleaning products, (iii) oven cleaning products, (iv) floor cleaning products, (v) wood floor cleaning products, (vi) bathroom cleaning products, (vii) shower cleaning products, (viii) toilet cleaning products, (ix) furniture cleaning products, (x) window and glass cleaning products, (xi) laundry stain removal products, and (xii) room fragrance products.
26. The Parties submitted that specific-purpose cleaning products should be considered within broader frames of reference which include either dilutable or non-dilutable all-purpose cleaners (**APCs**), as appropriate to the product, on the basis of demand-side substitution. However, on a cautious basis, the CMA considered it more appropriate to consider initially the constraints in narrower frames of reference as set out in the previous paragraph.
27. The Parties submitted that shower and bathroom cleaning products should be considered together, on the basis that customers do not negotiate prices for, or market, shower cleaning products separately from bathroom cleaning products. However, third parties responding to the CMA's questionnaire gave mixed views on whether bathroom cleaning products compete with shower

⁴ Case No COMP/M.7351 - HENKEL/ SPOTLESS GROUP – Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004, 25 September 2014

cleaning products. Therefore, on a cautious basis, the CMA maintained separate frames of reference.

28. The Parties also submitted that some consumers consider water and other 'home cleaning remedies' (eg vinegar solutions) as alternatives to window and glass cleaning products. However, the CMA did not find evidence indicating that these alternatives constrained specialist cleaning products.
29. The CMA did not receive any evidence indicating that the product frames of reference it identified should be widened on the basis of supply-side substitutability.

Segmentation between 'natural' and conventional household cleaning products

30. The Parties submitted that there is differentiation between the products of SCJ and PAD since SCJ's products are primarily marketed as efficacious and hardworking, while the marketing of PAD's products emphasises their non-toxic credentials and aesthetic aspects. The CMA therefore considered whether the Parties' products overlap at all.
31. Third parties gave mixed views on the extent of competition between 'natural' and conventional cleaning products. Most of the Parties' customers which responded to the CMA considered that competition between these products is limited. However, some customers (and all competitors) which responded to the CMA considered that conventional and 'natural' cleaning products do compete. One customer told the CMA that customers switch from conventional to 'natural' cleaning products in response to promotions on 'natural' cleaning products, but not vice-versa.
32. The Parties' internal documents also presented mixed evidence. [REDACTED].
33. On a cautious basis, and noting that the Parties' products would not overlap if these segments were assessed separately, the CMA assessed 'natural' and conventional products within the same frame of reference. The CMA considered the differentiation between these products categories in its competitive assessment.

Segmentation between own-label and branded household cleaning products

34. The CMA considered whether to include own-label cleaning products as part of the same frame of reference as branded household cleaning products.
35. All customers and competitors which responded to the CMA said that own-label household cleaning products compete with conventional household cleaning products, though third party views were more mixed on whether own-

label products compete with 'natural' cleaning products (which tend to be priced at a premium).

36. On the basis of this evidence, the CMA has considered own-label and branded household cleaning products within the same frame of reference. The CMA has taken into account the weaker constraint from own-label products on 'natural' cleaning products in its competitive assessment.

Geographic scope

37. The Parties submitted that the relevant geographic frame of reference for each product category is national, as there are few regional distinctions in relation to how retail customers purchase products, and the major UK supermarkets, which account for approximately [80-90]% of the Parties' UK sales, purchase goods on a centralised, national basis.
38. Third party evidence supported the Parties' views on the geographic scope of the overlapping product categories.
39. Therefore, the CMA has assessed the impact of the Merger for each product frame of reference on a UK-wide basis.

Conclusion on frame of reference

40. For the reasons set out above, and on a cautious basis, the CMA has considered the impact of the Merger in the following frames of reference:
 - The supply of non-dilutable all-purpose cleaning products in the UK;
 - The supply of kitchen cleaning products in the UK;
 - The supply of oven cleaning products in the UK;
 - The supply of floor cleaning products in the UK;
 - The supply of wood floor cleaning products in the UK;
 - The supply of bathroom cleaning products in the UK;
 - The supply of shower cleaning products in the UK;
 - The supply of toilet cleaning products in the UK;
 - The supply of furniture cleaning products in the UK;
 - The supply of window and glass cleaning products in the UK;

- The supply of laundry stain removal products in the UK; and
- The supply of room fragrance products in the UK.

Competitive assessment

Horizontal unilateral effects

41. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals. Horizontal unilateral effects are more likely when the merging parties are close competitors. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in any of the frames of reference set out above.
42. In undertaking this assessment, the CMA considered the Parties' shares of supply in each frame of reference, the closeness of competition between the Parties, and the remaining competitive constraint.

Shares of supply

43. The Parties submitted their share of supply estimates based on Nielsen and IRI data for each frame of reference.

Table 1: Share of supply estimates of the Parties, by revenue (UK, 2016)

Cleaning Product	SCJ	PAD	Combined
Shower*	[50-60]%	[20-30]%	[70-80]%
Specialty floor**	[10-20]%	[20-30]%	[30-40]%
Furniture	[30-40]%	[0-5]%	[30-40]%
Window and glass	[20-30]%	[0-5]%	[30-40]%
Oven	[30-40]%	[0-5]%	[30-40]%
Toilet liquids	[10-20]%	[0-5]%	[10-20]%
Bathroom	[10-20]%	[0-5]%	[10-20]%
Floor	[0-5]%	[0-5]%	[5-10]%
Non-dilutable all-purpose	[0-5]%	[0-5]%	[0-5]%
Kitchen	[0-5]%	[0-5]%	[0-5]%
<i>All household</i>	<i>[10-20]%</i>	<i>[0-5]%</i>	<i>[10-20]%</i>

Source: The Parties, using Nielsen data except where otherwise indicated.

* IRI data.

** The available data for this segment is not limited to the Parties' overlap in wood floor cleaning products.

44. The Parties noted that PAD's turnover in laundry stain removal products and room fragrance products in 2016/17 was [X] and [X], respectively.
45. The CMA noted that for the following products the Parties had a low combined share of supply and/or the increment arising from the Merger was negligible:

non-dilutable all-purpose cleaning products, kitchen cleaning products, oven cleaning products, floor cleaning products, bathroom cleaning products, toilet cleaning liquids, laundry stain removal products and room fragrance products. Moreover, no third party raised any concerns in relation to any of these products. The CMA has therefore not considered them further.

46. Given the Parties' higher combined shares of supply in window and glass cleaning products, speciality floor cleaning products, shower cleaning products and furniture cleaning products, the CMA focused its assessment on these four frames of reference.
47. Below, the CMA sets out first the evidence which is relevant to all four frames of reference, before discussing evidence specific to each.

Nature and closeness of competition

48. The Parties submitted that they are not close competitors in any frame of reference and that, although there is some evidence to suggest that some consumers switch between the Parties' products, such switching can be considered incidental and more limited than the switching between the Parties' products and those of other market participants (including own-label products). The Parties also said that SCJ's products are typically sold at a lower price point than PAD's products, and that at least one customer displays them in different parts of their stores.
49. This evidence was consistent with the Parties' internal documents, which indicated some differentiation between conventional and 'natural' cleaning products, both in branding and pricing. For example, [REDACTED]. However, the Parties' internal documents also indicated that there is a degree of competition between 'natural' and conventional products. For example, [REDACTED].
50. The CMA's market testing showed that major retailers typically display 'natural' and conventional household cleaning products (for each cleaning purpose) together, though natural products are typically sold at a higher price point.
51. All third parties which responded to the CMA's questionnaire said that own-label cleaning products compete closely with conventional branded cleaning products. Retailers' views were more mixed on whether own-label and 'natural' branded cleaning products constrain each other.
52. All retailers which responded to the CMA's questionnaire told the CMA that they stock other products which compete with the Parties' products. Most retailers said that the Parties' products do not compete closely. No retailer had concerns about the Merger.

53. Most competitors which responded to the CMA's questionnaire also had no concerns about the Merger. Two competitors raised general concerns that the Merger would strengthen SCJ's position in the supply of household cleaning products.
54. Overall, the CMA believes this evidence indicates that there is differentiation between the Parties' product offerings and that they are not close competitors in any of the product categories in which they overlap. Own-label products provide a competitive constraint in all product categories.
55. Having considered this common evidence on the nature and closeness of competition between the Parties' products, the CMA now presents the evidence specific to each of the four frames of reference.

Window and glass cleaning products

56. The Nielsen data provided by the Parties indicated that the Parties' combined share of supply in window and glass cleaning products is [30-40]%, with an increment of [0-5]%. However, amongst the retailers which responded to the CMA's questionnaire, the CMA found that SCJ and PAD have a combined share of supply of [50-60]%, with an increment of [10-20]%. The CMA notes that this higher figure was driven by the Parties' high combined share of supply in two specific retailers. Given the limited scope of the CMA's market testing, the CMA has for this frame of reference placed more weight on the Nielsen data.
57. The CMA's market testing found that retailers display alternative window and glass cleaning products, which compete with the Parties' products. These competing products include the market leader in this category, Reckitt Benckiser's Windowlene. The CMA also found that alternative suppliers are available to retailers in this category, which constrain the Parties, including Unilever's Seventh Generation and 'natural' own-label cleaning products.

Furniture cleaning products

58. The Nielsen data provided by the Parties indicated that the Parties' combined share of supply in furniture cleaning products is [30-40]%, with an increment of [0-5]%.
59. The CMA's market testing found that retailers display alternative furniture cleaning products, which compete with the Parties' products, including Reckitt Benckiser's Mr Sheen and Procter & Gamble's Flash. The CMA also found that alternative suppliers of 'natural' furniture cleaning products are available, which also constrain the Parties.

Wood floor cleaning products

60. The Nielsen data provided by the Parties indicated that the Parties' combined share of supply in specialty floor cleaning products is [30-40]%, with an increment of [10-20]%. However, this category combines wood floor cleaning products (in which the Parties overlap) with other specialist products used to clean other types of floor (which PAD does not supply). For this frame of reference, the CMA has therefore placed greater weight on data from its market testing, which found that, amongst the retailers which responded to the CMA's questionnaire, the Parties have a combined share of supply of [40-50]% in the supply of wood floor cleaning products, with an increment of only [0-5]%.
61. The CMA's market testing found that retailers display alternative wood floor cleaning products, which compete with the Parties' products, including Procter & Gamble's Flash, Unilever's Cif and London Oil Refining Co's Astonish. The CMA also found that alternative suppliers of 'natural' wood floor cleaning products are available, which also constrain the Parties.

Shower cleaning products

62. Although the Parties' IRI data suggested that they have a combined share of supply in shower cleaning products of [70-80]%, with an increment of [20-30]%, the Parties told the CMA that [§]. For this frame of reference, the CMA has therefore placed greater weight on data from its market testing, which found that, amongst the retailers which responded to the CMA's questionnaire, the Parties have a combined share of supply in shower cleaning products of [30-40]%, with an increment of [10-20]%.
63. The CMA's market testing found that retailers display alternative shower cleaning products, which compete with the Parties' products, including Procter & Gamble's Viakal, Star Brands' Stardrops and own-label products.

Conclusion on horizontal unilateral effects

64. On the basis of this evidence, the CMA believes that the Parties' products do not compete closely and rivals' alternative products, including own-label products, will continue to constrain the Parties across all frames of reference.
65. Therefore, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to any frame of reference.

Barriers to entry and expansion

66. Entry, or the expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC.
67. The CMA has found some evidence of recent entry and expansion in the household cleaning products' market, including the launch of Unilever's Seventh Generation brand of 'natural' cleaning products in the UK, and the launch of Tesco's own-label Eco Active cleaning products. However, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

Third party views

68. The CMA contacted customers and competitors of the Parties. No customers raised concerns about the Merger. Most competitors also had no concerns, though two said that the Merger would strengthen SCJ's position in household cleaning products. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

69. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the UK.
70. The Merger will therefore **not be referred** under section 33(1) of the Act.

Andrew Wright
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